JULY 13, 2020

Questions on 2020 Required Minimum Distributions Answered in New IRS Guidance

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), enacted on March 27, 2020, to provide relief from the coronavirus pandemic, allowed defined contribution plans, participants in those plans, and owners of individual retirement accounts ("IRAs") to waive required minimum distributions ("RMDs") from those accounts in 2020. This includes initial RMDs that would have been required by April 1, 2020, due to a terminated participant reaching age 70 ½ in 2019, or an active participant who reached age 70 ½ in or before 2019 and terminates employment in 2019 or 2020.

On June 23, 2019, the Internal Revenue Service released Notice 2020-51, which provides guidance and answers some questions for administering the CARES Act RMD waiver. The Notice also provides transitional relief for certain issues arising from the change in the required beginning date for RMDs from age 70 ½ to age 72 that was part of the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act") enacted late in 2019. In some cases, RMDs may have been made for participants reaching age 70 ½ in 2020 because distribution systems could not be changed in time to incorporate the SECURE Act changes, or participants took RMDs based on notices they received that were triggered by systems using the pre-SECURE Act required beginning date age.

Key Points in Notice 2020-51

- The rollover deadline is extended to August 31, 2020, for RMDs already made in 2020 that were not required
- Guidance provided on required amendments for 2020 waived RMDs, including a model amendment
- Guidance on RMDs that were distributed in 2020 even if not required due to the CARES Act RMD waiver and the SECURE Act change in the required beginning date
- A series of questions and answers for administering RMDs for CARES Act and SECURE Act changes

Rollover Deadline is August 31, 2020, for RMDs Already Distributed in 2020

For participants who already received RMDs in 2020 that now may be treated as eligible rollover distributions for certain purposes because of the CARES Act, Notice 2020-51 provides that the deadline for rolling over these distributions is August 31, 2020. Normally, RMDs are not eligible for rollover, and eligible rollover distributions that are paid directly to participants must be rolled over within 60 days of distribution or they are includable in income.

IRS Notice 2020-23 had previously extended the rollover deadline to July 15 for certain distributions taken after January of 2020. The extension in Notice 2020-51 extends the deadline to August 31, 2020, for all waived RMDs already distributed in 2020, including those distributed in January.

Relief Applicable to Retirement Plans

Notice 2020-51 provides important rollover relief provisions for distributions from retirement plans.

1. SECURE Act transition relief from rollover rules allows mistaken RMDs to be treated as rollovers.

Notice 2020-51 provides important relief to payors and plan administrators who made distributions in 2020 to a

terminated participant who reached age 70 ½ in 2020 as though the distributions were RMDs. The SECURE Act changed the required beginning date for a participant who had not reached 70 ½ by December 31, 2019, to age 72 so no RMD was due in 2020 for these participants. Some RMD were made, however, because systems could not be updated in time to prevent them. A distribution that otherwise would have been an RMD should instead be treated as an eligible rollover distribution. However, eligible rollover distributions are entitled to direct rollover treatment, require a special tax notice, and require 20% withholding if not paid in a direct rollover, which requirements are not applicable to RMDs. Payors and plan administrators who made the distributions believing them to be RMDs generally would not have treated the distributions as eligible rollover distributions for these purposes. Notice 2020-51 provides an exemption from these eligible rollover distribution requirements for these distributions to be treated as compliant rollover distributions for these purposes.

2. Rollover relief for CARES Act wavied RMDs that are included in a series of substantially equal periodic payments. Normally, distributions of substantially equal periodic payments from retirement plans are not eligible for rollover. One method for calculating substantially equal periodic payments is based on the RMD rules. Notice 2020-51 clarifies that distributions of substantially equal periodic payments that are equal to amounts that would otherwise be RMDs if not waived by the CARES Act, or include 2020 RMDs and are based on at least annual payments of at least 10 years or certain life expectancies, will be eligible for rollover. This includes amounts paid in 2020 or paid in 2021 for the 2020 calendar year (based on an April 1, 2021, required beginning date of a non-owner who reached age 70 ½ on or before December 31, 2019, and terminated employment in 2020).

3. Rollover relief includes RMDs with a required beginning date of April 1, 2021. If a participant reached age 70 ½ on or before December 31, 2019, but has a required beginning date of April 1, 2021, because the non-owner terminated employment in 2020, any distribution made to that participant because of the April 1, 2021, required beginning date—which would otherwise be an RMD if not for the CARES Act RMD waiver—is eligible for rollover treatment, even if paid in 2021. (No other person would have a required beginning date of April 1, 2021. Any participant who had not reached 70 ½ by December 31, 2019, will not reach the new SECURE Act age 72 in 2020 that would trigger an April 1, 2021, required beginning date.) RMDs for the 2021 calendar year still will need to be made by December 31, 2021, and any distribution made in 2021 will be treated as a 2021 RMD, rather than an eligible rollover distribution, if necessary to satisfy the 2021 RMD.

Plan Amendment Requirements

Notice 2020-51 provides a sample amendment to implement the RMD waiver added by the CARES Act, in the form of a two-part amendment to a preapproved base document and corresponding adoption agreement. The amendment contemplates allowing each participant to elect whether or not to receive the 2020 RMD distribution and specifying a default option if the participant makes no election.

Notice 2020-51 provides that 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."

Notice 2020-51 reiterates the CARES Act requirement that any plan amendment must be adopted no later than the last day of the first plan year beginning on or after January 1, 2022 (or by December 31, 2022, for calendar year plans), and further explains that the amendment "must reflect the operation of the plan beginning with the

effective date of the plan amendment." The amendment must be in writing and must be signed and dated by the employer, "including an adopting employer of a pre-approved plan." This means that pre-approved plan sponsors cannot adopt RMD amendments on behalf of adopting employers.

Notice 2020-51 does not expressly provide that every plan must adopt an RMD wavier amendment. However, the statement that the written amendment must reflect the operation of the plan requires careful scrutiny of the existing plan's language to assess whether it meets this requirement. The existing RMD regulations provide that distributions will be made in accordance with Internal Revenue Code section 401(a)(9) and Treasury Regulations sections 1.401(a)(9)-2 through 1.401(a)(9)-9. The regulations provide further that a "plan also must include any other provisions reflecting section 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin." Accordingly, failing to add an RMD waiver amendment puts the plans qualified status at risk. Given that all plans will need to be amended in some respect to implement other aspects of the SECURE Act and CARES Act, an RMD waiver is best viewed as an essential element of that amendment.

Notice 2020-51 also provides that plan amendments may not eliminate an optional form of benefit. So if a plan currently provides for a distribution of amounts equal to the 2020 RMD, then an amendment to eliminate the right to take that distribution would violate the anti-cutback rule.

Additional IRA Relief

Owners and beneficiaries of IRAs receiving amounts that otherwise would have been RMDs if not waived by the CARES Act or had the required beginning date changed by the SECURE Act can likewise repay those amounts to the IRA by August 31, 2020, to avoid having those amounts includable in 2020 income. Notice 2020-51 also waives the limit of one rollover per year otherwise applicable to IRAs for these repayments, which are treated as rollovers. Notice 2020-51 also provides that IRAs do not need to be amended to provide the 2020 RMD waiver. IRA trustees, issuers, and custodians must notify an IRA owner that no RMD is due for 2020, which can be accomplished by providing the owner with a copy of IRS Form 5948.

Guidance on Other Issues

In a series of questions and answers, Notice 2020-51 also provides guidance on these topics:

If a plan permits an employee or beneficiary to elect whether RMDs are determined using the 5-year rule or the life expectancy rule, the CARES Act allows the plan to be amended to extend the election deadline to the end of 2021, rather than the end of the calendar year following the calendar year of the employees death.

The time for making a direct rollover for a nonspouse designated beneficiary of an employee who died in 2019 is extended until the end of 2021.

The CARES Act does not extend any deadlines or modify any rollover requirements except for those deadlines or requirements described in Notice 2020-51, and specific examples of deadlines that are not extended are provided.

Distributions made from a plan may be rolled over back into the same plan, if the plan permits such rollovers and the rollover satisfies all other rollover requirements.

The CARES Act RMD wavier does not apply to payments that are part of a series of substantially equal periodic payments under the RMD method, so stopping the payments would be a modification such that all the payments made under the series will be subject to a recapture tax.

The CARES Act RMD waiver does not apply to defined benefit plans, regardless of which rule the defined benefit plan is using to determine the portion of a single sum distribution that is an RMD.